

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SHERON PHIPPS,

Petitioner,

v.

**CASE NO. 2:14-CV-227
CRIM. NO. 2:11-CR-00080
JUDGE PETER C. ECONOMUS
MAGISTRATE JUDGE KEMP**

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

On March 11, 2014, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section § 2255 Proceedings recommending that the instant motion to vacate, set aside or correct sentence be dismissed. Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*. Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons that follow, Petitioner's *Objection* is **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his habeas corpus petition. Petition again raises all of the same arguments he previously presented. Specifically, Petitioner asserts that, because the drug quantity involved, which is determined at sentencing, increases the potential sentence, drug quantity constitutes an element of the offense that must be found by a jury, and the failure to submit the drug quantity involved to the jury makes his conviction constitutionally invalid.

Petitioner asserts that he could not earlier raise this claim on direct appeal, because his claim relies on *Alleyne v. United States*, 133 S.Ct. 2151 (2013), decided on June 17, 2013, and after the Court of Appeals had already dismissed his appeal.

The Magistrate Judge dismissed Petitioner's claim on the merits, in spite of his failure to raise the claim on direct appeal, so this Court need not address the issue of procedural default. That said, for the reasons already detailed in the Magistrate Judge's *Report and Recommendation*, Petitioner's claim plainly fails. This Court need not again address the same issues already discussed by the Magistrate Judge, or repeat that reasoning here.

Petitioner's *Objection*, Doc. No. 56, is **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE